May 15 1930 Volume 5, Number 9

THE LOS ANGELES BAR ASSOCIATION

BULLETIN

Official Publication of the Los Angeles Bar Association, Los Angeles, California

WHAT HAPPENS TO YOUR APPEALS

THE ENDORSEMENT OF CANDIDATES FOR BENCH

THE PRESIDENT'S MESSAGE TO MEMBERS

INCOME TAX ON COMMUNITY PROPERTY

AGREEMENTS TO CONVEY

Printed by PARKER, STONE & BAIRD COMPANY
Law Printers and Engravers
241 East Fourth Street Los Angeles, California

What Happens to Your Appeals

ANALYSIS OF RESULTS OF APPEALS BY DISTRICTS AND COUNTIES. PERCENTAGES OF REVERSALS AND AFFIRMATIONS BY SUPREME COURT AND DISTRICT COURTS OF APPEAL FOR ONE YEAR.—LOS ANGELES AND SAN FRANCISCO COURTS FIGURES

By James Farraher of the Los Angeles Bar

Manifestly there is no subject of greater interest to the active lawyer than the matter of appeals. What happens to the average judgment of the Superior Court when it is taken to the higher courts? What are the mathematical chances of reversal or affirmation of the average case if and when it reaches the appellate courts?

Believing that a check of the records might disclose some interesting figures, and make good reading for lawyers, not only in Los Angeles but throughout the state, I checked the decisons of the District Court of Appeal and the Supreme Court of the State for the one-year period from the first of April, 1929, to the last of March, 1930, and tabulated the results. Very early in the examination it was discovered that Superior Court judges make mistakes, and upon going further into the subject it appears that judges of the District Courts were not entirely free from error, but there being no further statistics to guide the investigator one must accept the Supreme Court decisions as one hundred per cent good.

After making a very careful study of the law of this state on the question of libel and contempt, during which the writer got all tangled up in the laws of radio and the ministry, it was determined to give at least some of the results of this labor in this article, being careful to preface these remarks by the assurance adopted by bond houses dispensing foreign bonds, that the information contained in the article is not guaranteed, but comes from sources considered reliable.

Percentage of Reversals and Affirmations

The figures have been divided into *reversals* and *affirmations,* necessarily, therefore, placing in the reversal column all decisions which carried the designation "Reversed and Affirmed," and placing in the affirmation column all decisions designated "Affirmed and Modified." In the case of Writs it was endeavored to determine whether the granting or refusal of the Writ was a reversal or affirmation of the trial court. The statistics are limited to a review of Superior Court decisions.

Taking the entire year period, out of 983 cases decided in all three District Courts of Appeal, 26.7% were reversals. The Supreme Court on direct appeals from the Superior Court reversed but 26% of its cases, out of 123 cases so submitted to it. Inasmuch as the Supreme Court is drawing its appeals from the same sources, one naturally wonders whether the Supreme Court is a trifle lenient or whether the District Courts are a trifle too severe. To reach a conclusion upon this point it necessarily involves a comparison of the records of the three District Courts of Appeal. In the first district the reversals are 22.3%; in the second district 35%; in the third district 21.1%, and in the fourth, which has been operating only since October last, the percentage is 36.1%.

So that two of the districts have been considerably easier on the trial courts than the Supreme Court has, whereas one of the districts, our own, is considerably in excess of the Supreme Court in the percentgae of its reversals of the trial courts. The second and third districts are very close, with the third surpassing the second in its "leniency." One wonders whether the second and third districts are the more lenient of the districts, or have the better trial judges within their confines. Or is the good record of the trial judges of these districts due to the leniency of their Appellate Courts?

30 Percent Reversals of Los Angeles Judges

Out of 243 cases that went up to the various District Courts of Appeal from Los Angeles incumbent judges, 30% were reversed, and it is interesting to notice how the three old districts, to-wit, the first, second and third, reacted to decisions of the

Los Angeles judges. We find the first district, out of 37 cases submitted, reversed 29%; the second district, out of 155, reversed 33%, and the third district, out of 51, reversed 21.5%. So here again it looks somewhat as though the second district's large percentage of reversals is due to its strictness as compared to the first and third districts, rather than to the character of decisions of the trial courts within the district, although the first district's reversals of Los Angeles decisions are considerably above the first district's average of 22.3%.

Taking the action of the Appellate Courts of the second district upon the decisions of Los Angeles judges the average (as we have said before), is 33% reversals, which is slightly below the average for the district of 35%, but considerably above San Francisco Superior Court judges with a record of but 20.8% reversals, Alameda County with a record of 16%, and Sacramento with a record of 17% and considerably above the state average. All of the latter counties, of course, are in the more lenient districts numbers one and three. The second district got but one shot at a San Francisco decision and gave it a 100% reversal.

The fact that reversals of the judges of this county are in excess of the average of other large counties is not attributable to the fact that so many judges from the so-called "cow counties" have appeared here, because we find their average reversals is 24%, but even with them, we find this district much more severe than the other districts.

Supreme Court Reverses District Courts 50% on Hearing

The fourth district is following in the footsteps of the second in the percentage of its reversals. The high percentage of both districts may be due to the fact that both of these districts have had to pass on the decisions of Orange County, Kern County, Riverside County and San Diego County. The District Courts of Appeal reversed 47% of Orange County's decisions submitted to it, 50% of Kern County's, 38.8% of Riverside County's, and 41% of San Diego's. San Bernardino, on the other hand, has cut down the average with but 23.3% reversals.

But here again we are brought back to the fact that the Southern District Courts are more severe than the Northern districts because the Supreme Court on hearings granted after decision by the District Court of Appeals, reversed the first district 55%, the second district 57%, and the third district 50%. These percentages, of course, are higher than the percentages of the District Court of Appeal's reversals for the reason that it is the figures only on those cases which the Supreme Court considered close enough to require further hearing by it, but they do show that the second district is the strictest of the three old districts. (The fourth district up to April first had not had any hearings by the Supreme Court on its decisions.) For instance, the Supreme Court reduced Orange County's 47% reversals to 37%, and Riverside from 38.8% to 28%, whereas in the third district we find the Supreme Court increasing the reversal percentage of certain trial courts in that district. For instance, Sacramento was increased from 17% to 24% reversals. Just for the purpose of comparing the first and second divisions of the second district we took a cross section out of the year and found that out of 89 cases the first division reversed 33% and out of 92 cases the second division reversed 34%.

Taking the entire state for the full year period and making the Supreme Court corrections on the District Court of Appeal figures, we find the record reduced to 25.9%. By adding Supreme Court action on direct appeals we find the state average on appeals of 26% which is also the percentage of the Supreme Court alone.

Los Angeles County Figures

Inasmuch as we are more interested in our own county of Los Angeles than elsewhere, there is incorporated herein full statistics as to Los Angeles County Superior Court judges, showing the action of the District Court upon the judgments appealed to them, the action of the Supreme Court on judgments directly appealed to it, and the reversals of the District Courts by the Supreme Court. In the column under the latter head the figures in parenthesis are affirmations of the District Court decisions, whereas the figures not in parenthesis are reversals of the District Courts. For example, in the case of one judge, he had two reversals by the district Court, and under the last column we find the Supreme Court affirmed two of the same judge's opinions that the District Court reversed. The trial court was affirmed in each instance, so we show the action as affirmations. If they had reversed the action of the

District Court parenthesis would have so indicated.

Los Angeles County incumbent judges fared with the District Courts as follows:

First District, out of 37, 29% reversals.

Second District, out of 155, 33% reversals.

Third District, out of 51, 21.5% reversals.

Average out of 243 was 30% reversals.

During the same period "cow county" judges, out of 62 cases, were reversed 24%.

For Los Angeles, outside of present incumbents, the record was:

First District, out of 16, 12.5%.

Second District, out of 66, 38%.

Third District, out of 37, 10.9%.

LOS ANGELES COUNTY

Judges with ten or more cases appealed

	District Court		Supreme Court		Supreme Court after Hearing by District Court	
	A	R	A	R	A	R
Schmidt	15	9	2			
Aggeller	4	4	1	1		(1)
Doran	16	4			(1)	(1)
Wood	12	1				
Hanby	10	4	2			
Hazlett	8	1	1			
Guerin	8	4	1		1	
Shaw	12	3			(1)	
Bishop	7	2	1			
Collier	8	2	2			1(1)

*A indicates trial court was affirmed
*R indicates trial court was reversed

Those having five to nine cases appealed

	A	R	A	R	A	R
Bowron	4	0		1		
Archbald	4	3	1			
Keetch	3	2	1			
Wilson	3	6				(1)
Stephens	3	0	2	0		1
Desmond	3	2			2	
Hahn	4	0	0	1		
Hardy	4	4			(1)	
Fleming	8	1				
Crawford	3	5	1			
Fricke	4	4	1			
Gates	2	3			(1)	
Valentine	5	3	1			

Those having under five appealed

	District Court		Supreme Court		Supreme Court after Hearing by District Court	
	A	R	A	R	A	R
Yankwich	2	0				
Craig	2	0				
McComb	3	0	1			
Westover	1	0				
Hollzer	1	2				
Edmonds	2	2				1
McLucas	0	2			1	(1)
Scott	2	0				
Burnell	3	0	1			1
Tappaan				1		
Crail	4	0				(1)

*A indicates trial court was affirmed
*R indicates trial court was reversed

SAN FRANCISCO COUNTY

	First District		Second District		Totals	
	A	R	A	R	A	R
Cabaniss	13	4			13	4
Conlan	3	3			3	3
Deasy	8	2	0	1	8	3
Dunne	7	0			7	0
Fitzpatrick	8	3			8	3
Goodell	4	0			4	0
Graham	2	1			2	1
Griffin	9	1			9	1
Jacks	3	0			3	0
Johnson	10	0			10	0
Mogan	9	3			9	3
V. Nostrand	9	1			9	1
Murasky	1	6			1	6
Roche	..	..			..	..
Shortall	7	2			7	2
Ward	9	1			9	1
Total Incumbents	102	27	0	1	102	28
Percent	20.9%		100%		20.8%	
S. F. Local Judges	12	2	2	0	14	2
S.F. Outside Judges	12	3			15	3
Total S. F.	126	32	2	1	161	33
Percent	20.2%		33%		20.4%	

(Continued on page 286)

To the Lawyers of Los Angeles County:

It is the duty of every practicing lawyer in Los Angeles County to become a member of, and give support to, the Los Angeles Bar Association.

In the interest of every member of the profession, the Association is carrying on an active and constructive program, which warrants your co-operation and active support. We invite and urge every lawyer in the County who is not already a member to join the Association now.

NEW MEMBERSHIP COMMITTEE

Chas. L. Nichols, *Chairman*
Stevens Fargo, *Secretary*

Harry G. Balter
I. B. Benjamin
Wm. B. Gilroy
James H. Mitchell
Louis B. Minter
Kent Redwine
Roy A. Linn

Use Enclosed Application Blank

Why the Bar Association Endorses Candidates for the Bench

By Lawrence L. Larrabee of the Los Angeles Bar

Prior to 1915 the maintenance of a judiciary of high ability in Los Angeles County could hardly be called a problem. Superior Court Judges were few, their records and the character of their qualifications were correspondingly more conspicuous, and the question as to whether a judge should be re-elected or replaced with a non-incumbent was not ordinarily a hard one for the civic-minded voter to decide.

The year 1920 disclosed a growth in population and business of this County which has probably not been equaled in any other locality. This growth continued. With it came a proportionate increase in the business of the courts, and so the necessity for more judges. As each addition to the number of judicial offices occurred, the field of candidates for those offices enlarged.

Early in the past decade a judiciary election in this county had become attended with the following conditions, viz., many offices to be filled; numerous candidates for each office; a huge population, the bulk of which was new in the community and was entirely unacquainted with the abilities of the various candidates; greater distribution of population to centers removed from the metropolitan district which furnished almost all the candidates, and no authoritative source of intelligent, unbiased information concerning the merits of the candidates. These conditions suggested the opportunity for the legal profession to render an important and valuable service to the electorate, and inspired the Los Angeles Bar Association to offer, for the performance of that service, the facilities which its organization made possible.

It was well known that on the eve of a judiciary election every lawyer was called upon by a large number of his clients to advise them which of the candidates were, in his opinion, most deserving of election. It is likely that the advice thus obtained was, in the majority of cases, acted upon. Of course this was better than voting with no information at all, but it is obvious that such advice may have been colored by the personal likes and dislikes of the individual giving it.

The Association Plebiscite Helpful to Public

In 1920 the officers of the Bar Association began the work of devising a method by which an authentic appraisal of the qualifications of judiciary candidates could be obtained and results given to the voters. It was in that year that the Association's first plebiscite was taken. The vote was convincing in the majorities given, and the endorsements were published. There was no doubt expressed by anybody as to the dependability of that opinion or of the sincerity of the Association in its desire to serve the public by offering it for the guidance of the voters.

In connection with every judiciary election since 1920 the Association has secured the collective opinion of its members upon the qualifications of the candidates, and has spent considerable sums to communicate it to the electorate for its assistance in voting wisely. As the years have passed, the value of this service to the civic welfare of this community has been demonstrated over and over again. In numerous instances the activity of the Association has resulted in the election of men of outstanding ability as Judges who otherwise would have been defeated by opponents whose only abilities were those of waging a clever political campaign.

The Association holds steadfastly to the idealism and vision with which its first efforts in this cause were made, and which have inspired its leaders in successive years to continue the work which they know is so vitally needed. In this connection it might be helpful to recall that in 1926, when there were 36 places on the Superior Court and Municipal Court benches in this County to be filled by gubernatorial appointments, there were no less than 215 candidates for these Judgeships. It is not unlikely that a similar situation would exist in connection with every judiciary election if the Bar Association were to discontinue its efforts to bring about the selection of judges solely upon a basis of qualification. It is easy to imagine the result on the personnel of the Bench if such a condition should arise.

Appointments to Bench Based on Plebiscite

It is interesting to note that in 1926 the Governor was unwilling to accept the estimates of the candidates themselves, or those of their close friends, which the candidates furnished him as arguments for their appointment. He asked the Los Angeles Bar Association to secure the opinion of its members as to which of them were best qualified, and report the result to him. This was done and the appointments were made in accordance with the results of the plebiscite. The judicial record of every one of these appointees has thoroughly vindicated the soundness of the estimate of his ability which was expressed in the plebiscite.

The Bar Association believes that an able judiciary is vitally important to successful government; that its personnel should be chosen from the best available material; that the wisest choice is that made from considerations of learning, integrity, fearlessness, breadth of experience in the law, and judicial temperament, rather than political affiliation or campaigning ability. It believes that lawyers are better able to estimate the extent to which the essential qualifications are possessed by those of their fellows who seek judicial office, than are laymen; that the great majority of laymen recognize that fact, and welcome the opinion of lawyers concerning candidates for the bench; that the profession is under a duty to give the public the benefit of its opinion to the end that the best men may be chosen to fill these important offices. It believes that its persistence in carrying on this work will tend to discourage the candidacies of those who do not posesss qualifications for judicial office to the degree which their fellow professionals recognize as necessary to make a competent judge.

The Association has learned by experience that the mere endorsement of candidates without communication of the endorsement to the public, is ineffectual; that to make its work of real benefit, it is necessary that information concerning its purpose and the candidates it recommends, be thoroughly disseminated. Its so-called "campaign" seeks to do nothing more than to communicate to the voting public such information. The Association does not campaign against any candidate; it confines itself to an effort to secure the election of those persons whom the members believe to be best fitted.

No Attempt to Dictate to the Public

Persons unacquainted with the motives of the Association have said that the Association is trying to dictate to the public how it should vote; that it is attempting to take from the public its right to select its judges; that the opinion obtained in the Association's plebiscite is not worth anything because not *all* the members participate in the vote; that the Association is attempting to secure control of the courts, more particularly, of the judges; that the Association's activity is an attempt to build up a "lawyers' trust" for the purpose of controlling the administration of justice; etc.

To anyone familiar with the work of the Association and its object, the absurdity and falsity of each of these charges is at once apparent.

The Association has no desire to dictate to the public; it is merely trying to help the voters to vote intelligently when they approach the problem of selecting a few out of a large number of candidates for these very important offices. It hopes to leave the selection of judges *truly* in the hands of the public and not in the hands of a few politicians who have ulterior motives in promoting the election of certain candidates.

The Association does not practice before the courts and therefore cannot possibly have anything to gain by controlling the courts. It should be observed that it is not the Association, as such, which passes upon the qualifications of candidates, but that it is the *members* of the Association, and that the Association merely acts as the machinery for communicating this expert opinion to the public. The plebiscite ballot is entirely secret and no opportunity is given to any candidate to ascertain how any member voted as to his qualifications; there is therefore no room for fear or favoritism to enter into the expression of the individual's opinion in the plebiscite. Of what importance is it that not all the members participate in the plebiscite if a number sufficient to give authenticity to the opinion expressed, have voted? There have rarely been less than 1,100 votes cast in an Association plebiscite. Is not the overwhelming majority opinion of a committee of 1,100 lawyers more dependable than that of the partisan supporters of the respective candidates?

CHARLES GREENBERG and LAURENCE W. BEILENSON

announce that they have dissolved their partnership for the practice of law.

CHARLES GREENBERG

will be located at

826 Western Pacific Building

LAURENCE W. BEILENSON

will remain at

1422 Chapman Building

REUEL L. OLSON

Attorney and Counselor at Law

Formerly Associated With
HUNSAKER, BRITT & COSGROVE

Announces the Opening of his Offices
For the General Practice of Law

Suite 533 Title Insurance Building
433 South Spring Street
Los Angeles, California

Telephone FAber 2196

Los Angeles Bar Association Bulletin

VOL. 5 MAY 15, 1930 No. 9

Official Publication of the Los Angeles Bar Association. Published the third Thursday of each month. Entered as second class matter May 14, 1930, at the Postoffice at Los Angeles, Calif., under the Act of March 3, 1879.

STATEMENT OF THE OWNERSHIP, MANAGEMENT, CIRCULATION, ETC., REQUIRED BY THE ACT OF CONGRESS OF AUGUST 24, 1912.

Of The Bar Association Bulletin published monthly at Los Angeles, California, for April 1, 1930.
State of California, County of Los Angeles, ss.

Before me, a Notary Public in and for the State and county aforesaid, personally appeared Howell Purdue, who, having been duly sworn according to law, deposes and says that he is the Editor of the Bar Association Bulletin and that the following is, to the best of his knowledge and belief, a true statement of the ownership, management (and if a daily paper, the circulation), etc., of the aforesaid publication for the date shown in the above caption, required by the Act of August 24, 1912, embodied in section 411, Postal Laws and Regulations, printed on the reverse of this form, to wit:

1. That the names and addresses of the publisher, editor, managing editor, and business managers are:
Publisher Los Angeles Bar Association, 1126 Rowan Building., Los Angeles, California. Editor Howell Purdue, 821 Title Insurance Building, Los Angeles, California. Business Managers. ————————.

2. That the owner is: (If owned by a corporation, its name and address must be stated and also immediately thereunder the names and addresses of stockholders owning or holding one per cent or more of total amount of stock. If not owned by a corporation, the names and addresses of the individual owners must be given. If owned by a firm, company, or other unincorporated concern, its name and address, as well as those of each individual member, must be given.)
The Los Angeles Bar Association, an unincorporated association, composed of members of the Los Angeles City and County Bar. Address: 1126 Rowan Building, Los Angeles, California.

3. That the known bondholders, mortgagees, and other security holders owning or holding 1 per cent or more of total amount of bonds, mortgages, or other securities are: (If there are none, so state.) None.

4. That the two paragraphs next above, giving the names of the owners, stockholders, and security holders, if any, contain not only the list of stockholders and security holders as they appear upon the books of the company but also, in cases where the stockholder or security holder appears upon the books of the company as trustee or in any other fiduciary relation, the name of the person or corporation for whom such trustee is acting, is given; also that said two paragraphs contain statements embracing affiant's full knowledge and belief as to the circumstances and conditions under which stockholders and security holders who do not appear upon the books of the company as trustees, hold stock and securities in a capacity other than that of a bona fide owner; and this affiant has no reason to believe that any other person, association, or corporation has any interest direct or indirect in the said stock, bonds, or other securities than as so stated by him.

5. That the average number of copies of each issue of this publication sold or distributed, through the mails or otherwise, to paid subscribers during the six months preceding the date shown above is ———— (This information is required from daily publications only.)

(Signed) HOWELL PURDUE.
(Signature of editor, publisher, business manager, or owner.)

Sworn to and subscribed before me this 31st day of March, 1930. (Signed) NAN B. SMITH.
Notary Public in and for the County of Los Angeles, State of California.
(Notary Seal) (My commission expires February 15, 1933)

Form 3526.—Ed. 1924

The President's Message to Members

BY-LAWS AMENDED TO PERMIT MEMBERS OF OTHER COUNTY BAR ASSOCIATIONS TO PARTICIPATE IN PLEBISCITE. FUNDS NEEDED FOR JUDICIARY CAMPAIGN.—MAY MEETING

By Norman A. Bailie, President

At the last general meeting of the Association, April 24, 1930, the by-laws were amended so as to permit the members of all the bar associations in the county to participate in the plebiscite, whether they are members of our association or not. This will make our ballot on judicial candidates much more representative than ever before. Furthermore, this action on our part has stimulated keen interest in our Judiciary campaign on the part of the other associations, the presidents of which are members of the Advisory Committee of our Campaign Committee.

The proposed amendment to the by-laws providing for endorsements of judicial candidates to be sent out with the plebiscite ballots, failed to pass. A spirited discussion on this amendment developed and numerous members aired their views both pro and con. The by-law as finally passed provides for a statement of qualifications only. Campaigning in any form prior to the plebiscite is still strictly forbidden.

Funds Needed for the Campaign

For some reason, contributions to the campaign fund have not been coming in the way they should. The members should bear in mind that our judiciary campaigns cannot be carried on without funds; neither should the burden be left for a few to bear. The by-laws of the Association place upon the Trustees the duty of conducting these campaigns and the members must furnish the wherewithal.

Each member will receive a plebiscite ballot in the near future. We want to see every ballot marked and returned. It is nothing short of a disgrace that not more than fifty percent of those entitled to vote have ever participated in a plebiscite. Why is it? Let us have a full vote this year.

The May Meeting Especially Interesting

The meeting of May 22nd will be of special interest. Professor W. B. Munro of Harvard will give an address on "The World Court and International Relations." He is an authority on these subjects and a fine speaker. Those who fail to hear him will miss not only a treat, but a liberal education as well. The program committee has promised an excellent entertainment. We are anxious to have our monthly meetings well attended, and the committee in charge is entitled to your co-operation. Do not forget that the women members of your families are welcome at our dinners.

At the May meeting we plan to have present and introduce all the candidates for the Superior Court at the coming election. This will afford the members an opportunity to see and become acquainted with them.

Norman A. Bailie,
President.

Federal Income Tax and Federal Estate Tax as Applied to Community Property in California

By Todd W. Johnson of the Los Angeles Bar

Practically ever since the Federal Government enacted the individual income tax and the federal estate tax laws, California taxpayers have contended to have the community property laws of this state so construed by the taxing authorities as to permit husband and wife to make separate income tax returns, dividing the community income half and half, and to exempt the wife's half interest from the estate tax upon the husband's death.

Prior to the amendment of our Civil Code by the addition of Sec. 161-A, effective July 29, 1927, many suits were instituted, test and otherwise, to determine the rights and obligations of the taxpayer, and the taxing power of the government under these laws. Even now there are test cases pending in other community property states that may result in giving the government the right to ignore the community property laws in these states insofar as they affect the federal income tax. So that it cannot be said that the income tax question is definitely settled until the United States Supreme Court passes finally upon these test cases.

Income Tax Prior to July, 1927

The case of U. S. v. Robbins, 269 U. S. 315, decided by the United States Supreme Court on January 4, 1926, held clearly that all community income was taxable to the husband alone, and that the wife could not report one-half thereof in her income tax return.

Federal Estate Tax Prior to July, 1927

Until the decision in the Robbins case, supra, it seemed well settled by Wardell v. Vlum, 276 Fed. 226, that the wife's one-half interest was not taxable for Federal Estate Tax purposes at the husband's death, and that probably her one-half interest was taxable in her estate at her death prior to that of her husband. However, the Supreme Court decision in the Robbins income tax case, was such that it appeared likely that the Wardell v. Blum case was over-ruled. Consequently, a test case, Talcott v. U. S., (1927) 21 Fed. (2d) 493, was tried and the government secured judgment in the amount of a refund previously made on the theory that the wife's one-half of the community property was not taxable in the husband's estate, which judgment was affirmed by the Circuit Court of Appeals, Ninth Circuit, and on June 4, 1928, the U. S. Supreme Court denied application for writ of certiorari. In the case of Henshaw, et al, v. Commissioner, 31 Fed. (2d) 946, the Circuit Court of Appeals, affirmed the decision in Talcott v. U. S. supra, and likewise the Supreme Court denied the petition for writ of certiorari.

Thus it now appears well settled that community income was taxable in its entirety to the husband for Federal income tax purposes prior to Section 161-A of the Civil Code passed in July, 1927.

It also appears well settled that prior to the passage of the said section, the full community estate was taxable for Federal Estate Tax purposes in the husband's estate, and that none of such community estate was taxable in a wife's estate, when she predeceased the husband.

The passage of Section 161-A of the Civil Code raises several rather interesting problems which are hereafter discussed.

Earnings and Property Accumulated Therefrom After July, 1927

By Section 161-A the Legislature has, in my opinion, done what the Supreme Court in Spreckles v. Spreckles, 172 Cal. 775, and in Stewart v. Stewart, 249 Pac. 197, has indicated would create a vested interest in the wife to one-half the community property accumulated from earnings after the passage of the said section. If this premise is correct, and I believe it is, then so far as earnings after July, 1927, are concerned, and property purchased with such earnings, and the income therefrom, it follows that spouses in California are in identical position with those in Washington, Texas and Louisiana.

Test Cases Pending

Since the Robbins case the government has been trying test cases in the various

community property states to determine whether or not the husband's management and control of community property and income in such states makes the entire income taxable to him, despite the fact that in such states one-half of said community property is at all times vested in the wife.

In Bender v. Pfaff, the U. S. Circuit Court of Appeals, Fifth Circuit, on Feb. 8, 1930, upheld the right of husband and wife in Louisiana to file separate income tax returns on one-half the community income. A petition for certiorari will be filed by the government to the U. S. Supreme Court in this case. In Hopkins v. Bacon, 27 Fed. (2d) 140, a similar decision was reached by the same Circuit Court of Appeals as to the rights of the husband and wife in Texas. In Seaborn v. Poe, 32 Fed. (2d) 916, the Ninth Circuit Court of Appeals of the U. S., reached the same conclusion as to the rights of husband and wife in the state of Washington. This case is now in the U. S. Supreme Court on certificate to the Circuit Court of Appeals, Ninth Circuit.

If the decision of the U. S. Supreme Court in these cases is favorable to the taxpayers then it is logical to apply the same rule to California, insofar as it affects earnings since July, 1927, and the income from property purchased with such earnings.

If the decision of the Supreme Court is adverse to the taxpayers in these cases, then the husband would naturally be compelled to return all community income in California. My own opinion is that the Supreme Court's ruling will be in favor of the taxpayers, but the Robbins case lends some support to the government contentions.

Estate Tax Not Affected

The decisions in the income tax cases next above referred to, if adverse to the taxpayers, will not affect estate taxes. There the test is whether or not the one-half interest of the wife vested in her prior to the death of the husband. As heretofore stated, it is my opinion that earnings since July, 1927, and property purchased therewith, are, upon acquisition, vested one-half in the husband and one-half in the wife.

In Liebman v. Fontenat, (1921) 275 Fed. 688, the District Court of the United States, Western District of Louisiana, and in the Estate of Edward F. Sweeney, 15 B. T. A. 1287, decided April 9, 1929, the Board of Tax Appeals, held that in Louisiana and Washington the wife's one-half interest was vested in her during her husband's life time, and was not taxable in the estate of the husband at his death. The government has acquiesced in these decisions, and consequently if earnings since July, 1927, and property purchased therewith, are now vested one-half in the husband and one-half in the wife, only one-half is taxable in his estate and one-half is taxable in the wife's estate at her death.

Community Property Owned Prior to July, 1927, and Income and Accumulations Therefrom

The Supreme Court of California in the case of Stewart v. Stewart, 269 Pac. 439, held that section 161-A, whatever effect it may have upon community property acquired prior to its effective date, can not in any manner relate to or govern the ownership of property acquired prior thereto. This same principle is set forth in McKay v. Lauriston, et al. 263, and in re Phillips, 263 Pac. 1016. Manifestly, therefore, the income from all community property accumulated prior to July, 1927, is vested in the husband and he must return all of such income. Under California decisions relating to separate property and community property, it seems clear that all property purchased with income from community property accumulated prior to July, 1927, or with profits on the sale thereof, retains the character of the property from which it originated. Johnson v. Johnson, 11 Cal. 200, and cases cited in note 1, 5 Cal. Juris. at page 294, Edward v. Corbett, 32 Cal. 493, Martin v. Martin, 53 Cal. 235, Schuyler v. Schuyler, 70 Cal. 282, and Williams v. Tam, 131 Cal. 64. Therefore the entire income from these sources would likewise be taxable to the husband.

As stated above, community property accumulated prior to July, 1927, the income, increment in value, profits and property purchased with the income and profits therefrom, are vested in the husband and are taxable for Federal Estate Tax purpose in his estate, but are not taxable in the wife's estate, should she predecease her husband.

No comment is made upon Section 161a C. C. with reference to State Inheritance Taxes, as that section does not affect such taxes.

Agreements to Convey

REAL ESTATE INSTALLMENT SALES CONTRACT, SOURCE OF MUCH LITIGATION. — RECESSION ACTIONS FOR FRAUD FREQUENT. — FORM OF ACTIONS AVAILABLE TO VENDOR AND VENDEE

By Walter Eden of the Los Angeles Bar

A great deal of the litigation that burdens the calendars of our courts arises upon, or out of, installment sales contracts on real property. Especially is this true in Los Angeles county where more real estate has been sold on such contracts than in any other community in the entire country.

Actions for rescission on the ground of fraud, misrepresentation, mutual mistake, concealment of material facts, or breach of covenant by the seller, are the most frequent forms of suit by vendees against vendors. Perhaps misrepresentation made by the vendor, or his agent, to the vendee, as to the property in question is the basis for more suits than any other cause, and among the misrepresentations most often alleged are:

(a) Present and prospective values of the land;

(b) Improvements promised, which, when made, will greatly enhance the property to the vendee;

(c) Promises to resell any lot purchased, at a large profit to the vendee;

(d) Promises to maintain a resales office on the tract, and to list for resale the lots purchased on contract;

(e) Statements as to buildings to be erected in the immediate vicinity; the street improvements that are to be made within a short time; the record and reputation of the sales agents in successfully exploiting other tracts; that the prospect must close the deal at once or lose a chance for a large profit; and statements that the list prices of all lots are to be increased at once, and thereafter to be maintained at such increases.

These and other statements, as matters of fact, concerning the land and the improvements to induce the signing of a contract, often react against the seller in the form of a suit for rescission. In their zeal to make a sale, and, of course, to earn a commission, salesmen frequently use "high pressure" methods that inevitably involve the vendors in litigation, in spite of their efforts to safeguard themselves in the form of most carefully prepared contracts of sale.

Action by Vendee for Fraud

One who has been induced by fraudulent representations to sign a contract to buy land has, of course, several remedies; but he must elect a single remedy. The matter of an election of remedy therefore, becomes important.

(a) He may rescind the contract, restore, or offer to restore, property to the vendor, and sue to recover the money paid. In such case, notice of rescission must be given to the vendor promptly upon discovering the fraud. *Morris v. Courtney*, 120 *Cal.* 63; *Groppingiesser v. Lake*, 103 *Cal.* 37; *Freeman v. Kieffer*, 101 *Cal.* 254.

(b) Or, he may retain the property and sue for damages. *Morris v. Courtney*, 120 *Cal.* 63 (*supra*).

Actions by Vendee for Vendor's Breach

Where a vendor has breached a covenant of the contract, the vendee has one of three remedies which he may pursue:

1. He may stand upon the contract and sue at law for damages for the breach; *Buckmaster v. Bertram*, 186 *Cal.* 673, *Abbott v. The 76 Land & Water Co.*, 161 *Cal.* 42.

2. He may sue for specific performance, and for damages. *Buckmaster v. Bertram*, 186 *Cal.* 673 (*supra*), *Troughton v. Eakle*, 58 *Cal. App.* 161.

3. Or, he may rescind and recover the money paid. *Troughton v. Eakle*, 58 *Cal. App.* 161 (*supra*), *San Diego Construction Co. v. Mannix*, 175 *Cal.* 548, *Alderson v. Houston*, 154 *Cal.* 1.

He has but a single action, and is bound by the remedy he elects to pursue. If the action be for specific performance and the vendor is unable to perform, then the vendee, if entitled thereto, may have specific performance so far as the vendor is able to perform, and damages for the balance. *Garvey v. Lashells*, 151 *Cal.* 526, *McCowen v. Pew*, 147 *Cal.* 299.

Actions by Vendor

If the vendee breach a contract of purchase of real property upon an installment contract, the vendor may pursue any one of several courses against the vendee, to-wit:

1. Stand upon the contract and sue for the breach;

2. Remain inactive and retain the money paid;

3. Seek specific performance; *Amaranth Land Co. v. Corey*, 182 *Cal.* 66, *Gates v. McLean*, 70 *Cal.* 42.

4. Agree with the vendee for the mutual abandonment, in which case the vendee is entitled to the money paid on the purchase price; *Tuso v. Green*, 194 *Cal.* 574, *Glock v. Howard & Wilson Colony Co.*, 123 *Cal.* 1.

5. The vendor may foreclose, similar to the action to foreclose a mortgage; *Kent v. Williams et al.*, 114 *Cal.* 537.

6. He may waive his security and sue for the balance of the purchase price; *Amaranth Land Co. v. Corey*, 182 *Cal.* 66 (*supra*), *North Stockton etc. Co. v. Fischer*, 138 *Cal.* 100.

7. He may rescind and take possession, or sue for possession; *Gates v. McLean*, 70 *Cal.* 42 (*supra*).

8. He may quiet the title against the vendee. *Oursler et al, v. Thacher et al*, 152 *Cal.* 739, *Bishop v. Barndt*, 43 *Cal. App.* 149.

Actions to Foreclose Contract of Sale

In an action to foreclose a contract of sale, it is not necessary for the court to order a sale of the property as in a foreclosure of a mortgage, but the court may fix a time within which the vendee may pay the amount found due, or be foreclosed of all interest in the property. *Cross v. Mayo*, 167 *Cal.* 594, *Odd Fellows Sav. Bk. v. Brandee*, 124 *Cal.* 255.

It is not necessary that the vendor be the absolute owner of the property which he contracts to sell. If he is so situated as to be able to acquire the title he may contract for sale of the land, but he must, of course, be able to deliver title to the vendee when the contract is paid out, or sooner if the contract so provides. *Tahoe Pines Co. v. Newman*, 59 *Cal. App.* 186, *Hanson v. Fox*, 155 *Cal.* 106.

Sales of Community Property

If a married man makes a contract to sell community real property, signed by himself alone, and the property stands of record in his name alone, it will not be enforced, for the reason that the wife has not signed. The husband may be liable for damages for failure of such a contract to convey.

If however, the contract signed by the husband alone, is recorded for a period of one year, and there be no objection made by the wife in the meantime, her right to object becomes outlawed, and the contract may be enforced. (Sec. 172-a, C. C.)

Acknowledgment and Recordation

A contract to convey real property should be acknowledged and recorded; otherwise it is not constructive notice to third parties. Acknowledgment by the vendee alone is not sufficient. *Keese v. Beardsley*, 190 *Cal.* 465, *Jackson v. Torrance*, 83 *Cal.* 521.

The recording laws apply to a contract of purchase and sale, and a purchaser, in order fully to protect himself against the rights of third persons, should record his contract. (Sec. 1214 C. C.) *Shurtleff v. Kehrer*, 163 *Cal.* 24. However, a purchaser under an unrecorded contract, in possession of the property, will be fully protected. *Beattie v. Crewdson*, 124 *Cal.* 577, *Follette v. Pac. Lt. & Power Co.*, 189 *Cal.* 193, *Whitney v. Sherman*, 178 *Cal.* 435, *Taber v. Beske*, 182 *Cal.* 214.

Incidents of Agency

An agency to sell land must be created by a written instrument, but need not be acknowledged unless it is to be recorded. *Holland v. McCarthy*, 173 *Cal.* 597, *Delane v. Jacoby*, 96 *Cal.* 275. Such an agency to convey land by a corporation may be created only by a resolution of its Board of Directors. *Salfield v. Sutter Land Co. etc.*, 94 *Cal.* 546.

The agency is terminated by the death of the principal, or upon his becoming incompetent. (Sec. 2356 C. C.) *Ferris v. Irving*, 28 *Cal.* 645.

An agreement of agency to sell land may be revoked at any time unless a time is stated within which the sale must be made. *Easton, Eldridge & Co. v. Millington*, 105 *Cal* 49.

The rights, duties and obligations of an agent are similar to that of a trustee, the relationship being of a fiduciary character. He must exercise the utmost good faith toward his principal. *Tate v. Ailkin*, 5 *Cal. App.* 505, 1 *Cal. Juris.* 788, 808.

Restriction Clauses

A provision in a contract for the sale of real estate that no part thereof shall be used or occupied by any person who is not of the white or Caucasian race, is not a restraint on alienation, but upon the use of the property, and is valid. *Janss Inv. Co. v. Walden,* 186 *Cal.* 753, *L. A. Inv. Co. v. Gary,* 180 *Cal.* 680.

On the other hand, a provision against conveying to any but one of the white or Caucasian race is void. If however, the deed in pursuance of the contract fails to make the restriction, such a restriction in the contract is terminated.

Time of the Essence

Unless it clearly appears in the contract, time is not of the essence. Any provision of the contract, however, from which it appears that time is of the essence, is sufficient. *Brown v. Covillaud,* 6 *Cal.* 566, *Bennett v. Hyde,* 92 *Cal.* 131.

If the vendor accepts payment of past due installments, he thereby waives his right to insist on time being the essence, and if he wishes to revive the covenant making time the essence, he must give notice in writing to the vendee that in the future he will require strict performance. *Hoppin v. Mansey,* 185 *Cal.* 678, *Newell v. E. B. & A. L. Stove Co.,* 181 *Cal.* 385, *City of L. A. v. Krutz,* 170 *Cal.* 374.

Where time is made the essence of the contract, and the vendee defaults in his payment, the obligation to pay for the property and the obligation to deliver a deed, are concurrent obligations, and in order to put the vendee in default the vendor must tender a deed and demand payment, unless the default is excused by the conduct of the vendee showing that such a tender would be a vain and useless ceremony. *Kerr v. Reed,* 187 *Cal.* 409, *Lemle v. Barry,* 181 *Cal.* 6.

Where the contract is mutual each party is bound to perform at the same time, and neither may sue the other without showing performance, or an offer to perform. *Greisemere v. Hammond,* 18 *Cal. App.* 535, *Royal v. Dennison,* 109 *Cal.* 558.

In the absence of anything to the contrary, the agreement to convey and pay the purchase price are considered mutual, and these obligations are to be performed contemporaneously. *Cates v. McNeil,* 169 *Cal.* 697.

Where time is of the essence of the contract, a breach by the vendee, not waived by the vendor, terminates the vendee's right, and the vendee's offer to perform will not reinstate him. *Skookum Oil Co. v. Thomas,* 162 Cal. 539, *Champion Gold Mining Co. v. Champion Mines,* 164 *Cal.* 205.

Forfeiture

If the contract is payable in installments, and the vendor allows the whole of the purchase to become due without declaring a forfeiture for unpaid installments as they fall due, he cannot declare a forfeiture without tendering a deed. *Sausilito Land Co. v. Sausalito Imp. Co.,* 166 *Cal.* 302, *Boone v. Templeman,* 158 *Cal.* 290.

Whenever the vendor has accepted past due installments, the forfeiture is waived, and payment and the execution of a deed become concurrent conditions, the vendor must tender a deed; unless he does so, he cannot declare a forfeiture.

Special announcements by law firms of new locations and new associations are most effectively made to the profession through the pages of the Bulletin. *In addition, such announcements serve as a manifestation of good-will toward and co-operation with the* Bulletin *in its program of constructive endeavor for the welfare of the Bar Association.*

AMERICA LEADS EUROPE IN COMMERCIAL AVIATION BUT LAGS BEHIND IN ITS LAW

The United States is far ahead of Europe in commercial air transport, but is behind in the development of the law arising out of the new means of transportation. This will come as a great surprise to those who have been led to believe by our newspapers that we are being hopelessly outstripped by some of the leading nations of Europe in the practical use of air travel and transport.

No less an authority than "The Aeroplane," the leading publication in England devoted to air problems and the development of flying, is responsible for this conclusion. In reviewing the recent book, "Aeronautical Law," by W. Jefferson Davis, of the Los Angeles Bar, and published by the local law publishers, Parker, Stone and Baird, "The Aeroplane" says:

> "It comes as rather a pleasant surprise to realize that although America, for natural reasons, has far outstripped Europe in the development of commercial air transport, it has yet lagged considerably behind Europe in the solution of the legal problems arising out of such development. American distrust of the League of Nations and the consequent failure to ratify the International Air Convention is to some extent responsible for this state of affairs, while the wide legislative powers possessed by the individual States and the conflict of view between the State authorities and the Federal Government on the subject of their respective rights and powers has still further retarded the evolution of sound and uniform legal principles to govern the problems of Civil Aviation."

DIGEST OF LATEST OPINIONS OF AMERICAN BAR ASSOCIATION COMMITTEE ON PROFESSIONAL ETHICS

Confidences of a Client

Is it the duty of an attorney to disclose to the prosecuting authorities the whereabouts of a fugitive client? The committee's opinion says: "It is in the public interest that even the worst criminal should have counsel, and counsel can not properly perform their duties without knowing the truth. To hold that an attorney should reveal confidential information which he has obtained by virtue of his professional employment * * * would prevent such frank disclosures as might be necessary to a proper protection of the client's interest."

Business Cards in Publications

Canon 27 prohibits all forms of advertising for professional business, except that it states that the publication of ordinary business cards when sanctioned by local custom, is not per se improper. The publication of a lawyer's card is advertising to procure business and, unless it falls within the sanction of the exception stated, is prohibited by the canon, and must be regarded as improper. As the committee does not find that the publication of such cards in association and society journals and programs has ever been sanctioned by the local custom referred to (referring to the source of the inquiry where the Bar Association publishes a monthly journal), such publication is, in its opinion, improper. * * *

The publication in bar association journals of simple announcements of changes in partnerships, associates, firm names and office addresses, is not objectionable.

ATTORNEY'S LIEN LAW

By W. H. Douglass, of the Los Angeles Bar

The July and August, 1929, issues of the *State Bar Journal,* carried articles by Mr. John E. Staley of the Los Angeles Bar, and Mr. Everett C. McKeage of the San Francisco Bar, on the need of an attorney's lien law in this State. The writer practiced law several years in St. Louis, Missouri, where there is an attorney's lien law modeled after the New York law, and this law has proved to be of great help to lawyers in collecting their fees. It has not been necessary to resort to the law very often in order to collect fees, but it has proved helpful, in many cases, where clients would not pay promptly but for the law.

It seems to me that the Los Angeles Bar Association ought to take this question up and appoint a committee to draft a bill for such a law to be presented to the next Legislature. The lawyer is entitled to a lien for his fee. He should have the same pro-

(Continued on Page 284)

Expediting Litigation

By Nicholas W. Hacker, of the Los Angeles Bar

In a recent conversation with a well-known judge in the Superior Court, he made the statement that the lawyer had done practically nothing in the last 150 years to promote the administration of justice; that we are still following along the same old, slow, cumbersome way in the trial of law suits, with the result that our dockets were clogged with cases, and that the long delay in determining a controversy in court, in many instances, amounted to a denial of justice.

The responsibility for this condition cannot be laid at the door of the Legislature, but rests primarily upon the shoulders of the lawyers.

It is well to call attention to certain enactments intended by the Legislature to expedite litigation and relieve the court. Among these are sections 258 and 259 of the Code of Civil Procedure, which had their genesis more than 50 years ago. By section 258, as amended at the last session of the Legislature, provision is made for the appointment of court commissioners, and their qualifications stated. The powers of the commissioners are duly set forth in section 259. Also to be noted are the provisions for references and trial by referees set forth in sections 638 to 645 inclusive, Code of Civil Procedure.

New Law a Dead Letter

So far as we are advised, there has been little if any use made of this machinery and the law stands practically as a dead letter. It is the opinion of the writer that these sections should be made to accomplish the purposes for which they were originally designed, i.e., the expediting of trials or hearings to the advantage of every litigant, and the reducing of burdens otherwise cast upon the court. It is suggested that these purposes might be accomplished by recasting the sections so as to incorporate the following provisions:

That the court commissioners be required to be members of the bar, preferably who had practised in California for not less than 5 years; that all cases of foreclosures of mortgages, accountings, actions to quiet title, and all equity cases, be referred by the court to a commissioner to take testimony and report his findings of fact and conclusions of law to the court, with proper provisions for a hearing before the court on exceptions to the commissioner's report; that one or more departments be set up to hear and determine the questions arising on these exceptions.

The question naturally arises, will this procedure be of any benefit to the litigants, and will it save the time of the court? It is suggested that the benefit to the litigants would be this: The matter could be heard in the commissioner's office at the convenience of counsel and the parties, and by the time the case reached the court on the commissioner's report, the issues would be narrowed; the whole case might turn on a single question, and in any event could be disposed of with reasonable dispatch. Some of my brother lawyers may say that the expense would be increased to the litigant. That is probably true, but the tax-payer would be benefited, for the county would be at far less expense; and the convenience of the trial, the speedier action, would be well worth the increased cost to the litigants.

Book Reviews

Harry Graham Balter of Los Angeles Bar

THE ART OF THE TRIAL; by Norbert Savay of the Los Angeles Bar; 208 pp; 1929. Conway, Bogardus Co., New York-Los Angeles.

The purpose of the book appears to be to impress the practitioner with the artistic side of trial practice, and to stress the point that the successful attorney in such work is the one who embellishes his trial work with the touch of artistic finésse.

The treatise is divided into three parts. The first is entitled "Trial Strategy." In this section the author's knowledge of military campaigns and tactics is used as a background for drawing analogies between court strategy and that same technique as applied on the field of battle. Napoleon is the chief contributor to this effort, and his remarks and tactics are frequently referred to.

There, are doubtless, many points of similarity between court battles and those of the field. However, the reader is frequently at a loss to know whether he is reading a text on military campaigns and strategy or a treatise on court demeanor and practice.

The second part of the discourse is devoted to "Trial Factors," and therein Mr. Savay contributes but little to the working equipment of a competent trial attorney. However, in this section the chapter devoted to the personality of the lawyer is well worth while.

"Trial Technique" is announced as the title to the third and last division of the book. It is by far the best part of the work. However, even at this point, the author's old standby, that master strategist, Napoleon, speaks from the past to direct the trial lawyer in his courtroom activities. Some excellent "rules of thumb" for the examination of witnesses, both on direct and cross-examination, are offered. These should prove of particular value to the young advocate who has not yet had sufficient experience in trial work to enable him to learn the rules as based upon his own experiences in court.

JACK W. HARDY.

THE LABOR INJUNCTION; by Felix Frankfurter and Nathan Greene; 343 pp.; 1930; Macmillan Co., New York; $5.00.

Discussions in the United States Senate occasioned by the nomination of Judge Parker to be an Associate Justice of the United States Supreme Court, have very largely centered around the so-called "yellow dog" contracts, and the status of such contracts in our present-day industrial system.

What is a "yellow dog" contract? What is the place of the labor injunction in the legal adjustment of industrial relations? Under what circumstances and upon what kind of evidence may such an injunction be obtained? What is the scope of such injunctions and how are they enforced? These are only a few of the questions that are answered in this timely book by Felix Frankfurter, Professor of Administrative Law in Harvard University, and Nathan Greene, of the New York Bar.

The book gives a comprehensive and able account of the labor injunction in action. It is characterized by a fine spirit of empiricism in dealing with legal problems and realities that are inextricably connected with dynamic social forces.

Since the Supreme Court of the United States in May, 1895, for the first time, passed on the scope and validity of an injunction in a labor controversy, the labor injunction has been, and still is, a political problem as well as a legal problem.

The authors trace the history of the labor injunction in the shifting area of economic conflict, noting the ends and means which have been sanctioned by the courts as justifiable in controversies between employers and employees.

Although the first chapter of this book which deals with the "allowable area of economic conflict" is not easy reading, it is a remarkably concise and complete exposition of the factors that underlie the application of legal principles to a serious economic and political issue. It illuminates one of the darkest places in the labyrinth of the law.

The procedure necessary to obtain the injunction is next taken up, and the nature of the bill of complaint and affidavits is examined.

Since the avowed purpose of the authors is to show the labor injunction in action, the scope of its power with reference to the persons bound by the injunction and the nature and extent of the restraining clauses are carefully examined and described.

Since 1894, Congress has had a continuous stream of proposed legislation to curb equity jurisdiction in labor disputes. The legislative bodies of the various states have also had numerous proposals of a similar nature. After reviewing the main currents of legislation affecting labor injunctions, the authors conclude that "the position of labor before the law has been altered, if at all, imperceptibly," and characterize the history as a "record of legislative ineffectiveness."

The final chapter of the book is chiefly concerned with proposed legislation, and there is an analysis and indorsement of the principal features of the bill now pending in Congress to remedy many of the abuses in connection with the use of the injunction in labor disputes. A subcommittee of the Senate Judiciary Committee approved this legislation on April 26, 1930.

The book has an unusually good index, which adds to the usefulness of this work. Also helpful are the tables and charts contained in a series of appendices.

ALBERT E. MARKS

ATTORNEY'S LIEN LAW

(Continued from Page 280)

tection that materialmen, contractors, laborers, factors, carriers of freight, bankers, hotels, laundrymen, veterinarians and others have for their protection. In Missouri there are two sections of the statute dealing with this subject, and while these statutes have been a great benefit to the lawyers in that State, yet, these statutes are defective in many respects, as is also the New York statutes after which the Missouri law was modeled. However, the New York and Missouri statutes, in the light of the court decisions construing them and pointing out their defects, would furnish excellent models for a much better law than either of those States now have.

(Continued from page 262)

And to add to the confusion, the Supreme Court in passing directly on appeals from Los Angeles Superior Courts reversed but 17%, while San Francisco decisions were reversed 31%, which might indicate that the first district was too lenient and the second, too strict.

What the Record Does Not Tell

In considering the statistics given above, one must realize that the ability of the respective judges is not in direct ratio to the percentage of their affirmations. In the first place, we have no record before us of the percentage of reversals to the cases tried, but only the percentage of reversals to the cases appealed. The statistics also fail to take into consideration the personality of the different judges. For instance, one judge might conscientiously take advantage of the conflict of evidence rule by finding all facts in favor of the successful litigant.

Doubtless the reasoning of such judges is that their decision is correct and by finding all conflicting evidence in favor of the successful litigant the time and expense of appeal are done away with. Necessarily such a practice reduces the possibility of reversal.

I can give an example from my personal experience of the other extreme. A Kern County judge decided a water case against me after a hard fought trial. He was against me on a point of law. There was a conflict on every fact issue. He could have absolutely protected himself from any danger of reversal by finding those facts in favor of my opponent. Instead he found all facts for me and conclusions of law against me. This enabled the appeal to be taken up on the judgment roll at a nominal expense. It rendered it possible to submit to the higher court the exact point at issue without being tangled in the conflict of evidence rule.

It would be interesting to know what percentage of motions for new trial (after trial without jury) are granted. Granting of a new trial is better protection of a judge's record than a reversal. Incidentally it is also much speedier and brings the fruits of the litigation to the deserving litigant within his life time, which one cannot guarantee in the case of an appeal.

The May Meeting of Bar Association

MAY 22, 1930, 6:00 P. M.

AT ALEXANDRIA HOTEL

Of more than usual interest will be the regular monthly meeting of the Los Angeles Bar Association on May 22nd, when Dr. William B. Munro will deliver an address on "The World Court and America's Relation to it."

Dr. Munro is one of the most distinguished experts on governmental affairs in the academic world. For the past ten years he has been chairman of the Division of History, Government and Economics at Harvard University, and is now also taking an active interest in California Institute of Technology, and in Claremont College and Scripps College. He served as president of the American Political Science Association, and was a major in the United States Army during the World War, serving on the general staff in the training and instruction branch. Many books dealing with the government of the United States and governments of Europe are evidence of his scholarship.

As an experiment, there will be no music during the meal. But following the dinner, an entertainment will be given by Jose Arias' Mexican Troubadours, consisting of seven singers, dancers and musicians. They will all be in Mexican costume and will play Mexican and Spanish instruments, such as the salterio, mandolin and guitar. These Mexican Troubadours furnish color for the Mission Play and take part in practically all of the fiestas and entertainments where the ancient California customs and Spanish color are desired.

The candidates for the Superior and Municipal Courts will be guests of the Association, and all of them will be presented to the members present, but there will be no speeches.

The June meeting will be in the hands of the Junior Committee.